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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------|------------------|
| 10/614,323   | 07/07/2003  | Edward Anthony Bezek | CFLAY.00199           | 7359             |
| 22858  | 7590        | 04/11/2006           | EXAMINER              |                  |
| CARSTENS & CAHOON, LLP<br>P O BOX 802334<br>DALLAS, TX 75380 |             |                      | CASTELLANO, STEPHEN J |                  |
|  |             | ART UNIT             | PAPER NUMBER          |                  |
|  |             | 3727                 |                       |                  |

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                       |                       |  |
|------------------------------|-----------------------|-----------------------|--|
| <b>Office Action Summary</b> | Application No.       | Applicant(s)          |  |
|                              | 10/614,323            | BEZEK, EDWARD ANTHONY |  |
|                              | Examiner              | Art Unit              |  |
|                              | Stephen J. Castellano | 3727                  |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 January 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 27-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 27-40,42-50 and 52-56 is/are rejected.
- 7) Claim(s) 41 and 51 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

Claims 1-26 have been canceled. Claims 27-56 are pending.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 35, 37, 38 and 43-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Carew et al. (Carew).

Carew discloses a molded, thermoplastic container capable of packaging a single stack of fragile articles, the container comprising a tubular body with central longitudinal axis, the body sidewall has a plurality of flowing geometry mechanisms in the form of lateral flexible hinge areas (hinges that connect panel 5 to horizontal lands 7 as shown in Fig. 1, 2 and 5, in Fig. 5 the hinge is in the form of a double-S) and a weakened panel area (the panel is rigid but allowed to move inwardly due to the flexibility of the hinge areas), the sidewall has a permanently closed base, a middle section and a hermetically sealable upper section, the base and upper section having circular lateral cross sections of substantially equivalent diameters.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-34, 36, 40, 42, 47-50 and 52-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogg in view of Carew et al. (Carew).

Ogg discloses a thermoplastic container capable of hermetically sealing a single stack of fragile articles, comprising: a tubular body having a central longitudinal axis, the body has a sidewall positioned between a closed bottom end and a hermetically sealable open top end, the sidewall has an oval lateral cross section (at section 4-4) at a topmost portion of the sidewall where the sidewall transitions into the open top end. This topmost portion of the sidewall is considered the topmost portion of the middle section for claim 47. Ogg discloses the invention except for the flowing geometries mechanism and the top end having a circular cross section. Carew teaches a plurality of flowing geometries mechanism as previously described on a similarly constructed container, the flowing geometries mechanisms are positioned at a height just beneath where the top most portion of the sidewall transitions into the top open end. Carew also teaches the circular cross sections for both the top and bottom portions and these portions have substantially equivalent diameters. It would have been obvious to add the flowing geometries mechanisms to Ogg's container in order to avoid uncontrolled distortion of the container wall which results in an unsightly appearance. It would have been obvious to change the slightly oval cross section of Ogg's top end to be circular to conform the container's outermost dimensions to other circular cross sections of similar containers to have uniformity in outer dimensions which would allow easier packaging of the containers because otherwise, special provisions would have to be made for odd sized containers.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carew in view of Ogg.

Carew discloses the invention except for the parallel grooves. Ogg teaches panels 12, 13 similar to the weakened panels of Carew. Ogg's panels have parallel grooves. It would have been obvious to add parallel grooves to Carew's weakened panels to add strength to reinforce these panels and prevent unwanted deformation or distortion.

Claims 41 and 51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on M-Th 6:30-5.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc